

**Before the
Office of Licensed Allied Health Professionals
Respiratory Care Practitioners Governing Board
Concord NH 03301**

In the Matter of:

DOCKET # 2004-01

**Joseph M. Corkery, RCP
(Adjudicatory Matter)**

DECISION AND ORDER

By the Board: James R. Daley, RCP, Chair, Hearing Officer, Sean Kenneally, RCP,
Jeffrey Reisert, DO.

Also present: Veronique C. Soucy, Administrative Assistant to the Board
Jan Robbin Brown, Court Reporter

Appearances: Katherine Cooper, Esquire, Hearing Counsel
Joseph M. Corkery, RCP, Respondent, Pro Se

Board Member Carl J. Rod is recused.

On November 4, 2004, the Respiratory Care Practitioners Governing Board ("the Board") held a hearing in the matter of Joseph M. Corkery, RCP ("the Respondent") pursuant to the Board's "Notice of Hearing," which was served on October 26, 2004. The hearing was held in accordance with RSA 328-F:23, RSA 541-A:30, III and Ahp 209.02. The purpose of the hearing was for Mr. Corkery to Show Cause whether he met the terms of the Settlement Agreement of August 26, 2004 and to Show Cause whether his probationary license should remain in force if he did not.

BACKGROUND INFORMATION

On June 12, 2003, the New Hampshire Respiratory Care Governing Board ("the Board") issued the Respondent an unrestricted Respiratory Care license, license #0857, for the practice of respiratory care. In April 2004, Healthsouth notified the Board in a letter that it had terminated the respondent from employment due to theft of controlled substances. The Respondent had

pleaded *nolo contendere* to one count of theft of controlled substances in the Concord District Court.

The Board requested investigative assistance from the Administrative Prosecutions Unit of the Attorney General's Office ("the APU"), which later presented the Board with a report of investigation. On August 3, 2004, the Board voted that the Respondent's practice of respiratory care involved an imminent danger to life or health. RSA 328-F:26. On August 9, 2004, the Respondent was served notice, in hand, that his license was temporarily suspended and that a hearing was scheduled for Tuesday, August 17, 2004 at 9:00 a.m. RSA 328-F:26. All above parties attended the August 17 hearing. Subsequent to the hearing, but prior to the Board's written decision, the Respondent and Hearing Counsel reached a Settlement Agreement. On August 26, 2004, the Settlement Agreement was presented to the Board. The Board voted to accept the Settlement Agreement and signed it on that date. The respondent's license was reinstated subject to the conditions outlined in the Settlement Agreement.

On or about August 31, 2004, the Respondent contacted Hearing Counsel to inform her that he was terminated from his employment at the hospital and could not fulfill the requirements of the Settlement Agreements through his employer's Employee Assistance Program ("EAP"). At the Board's regularly scheduled October meeting, the Board voted that all the Settlement Agreement deadlines had passed for the Respondent to commence compliance of the agreement and that the Respondent had failed to do so. The Board voted that the Respondent's practice of respiratory care involved an imminent danger to life or health. RSA 328-F:26. On October 26, 2004, the Respondent was sent notice, via certified mail, that his license was temporarily suspended and that a Show Cause hearing was scheduled for November 4, 2004 at 9:00 a.m. The hearing took place as scheduled at the Board's office, located at 2 Industrial Park Drive, Concord, New Hampshire. All above parties were present. The issues before the Board were whether the Respondent has met all the terms of the Settlement Agreement; and, if not, whether the Board needed to impose additional sanctions or modify the Settlement Agreement.

The exhibits presented to the Board at the hearing were:

Exhibit 1 – The August 26, 2004 Settlement Agreement

Exhibit 2 – A confidential memorandum from Hearing Counsel dated August 31, 2004.

Exhibit 3 – A substance abuse evaluation dated September 30, 2004.

SUMMARY OF TESTIMONY

Hearing Counsel began with an opening statement. The August 2004 Settlement Agreement required the respondent to:

- provide a copy of the agreement to his employer;
- obtain a drug (LADAC) evaluation within 30 days of the agreement;
- follow the terms of the drug evaluation;
- attend a monitoring program;
- submit to random urine screens;
- abstain from alcohol and controlled drugs;
- take all prescribed medications;
- obtain a mental health evaluation within 30 days of the agreement;
- report to the Board on a quarterly basis; and
- sign releases to allow information to be submitted to the Board.

Hearing Counsel stated that the Respondent appeared to have made attempts to be in compliance with the terms of the Settlement Agreement. The respondent contacted the APU when he was terminated from employment. He stated that due to his termination, he could not access his employer's Employee Assistance Program. Hearing Counsel contacted the Physician's Health Program (used by the NH Board of Medicine) for monitoring but could not enroll the respondent. Hearing Counsel stated that the Respondent had represented that he had applied to a different program but is on the waiting list. Hearing Counsel notified the respondent that he had the opportunity for a free LADAC evaluation with the PharmAssist Program (used by the NH Board of Pharmacy). Hearing Counsel stated that the Respondent did obtain this LADAC evaluation with the results forwarded to her on October 4, 2004.

Hearing Counsel also stated that the respondent is not in compliance with the urine screens; and is not in compliance with the mental health evaluation.

The Respondent stated that his inability to be in compliance with the terms of the Settlement Agreement is a direct result of his loss of employment. The Respondent stated the costs of such programs are prohibitive and that his finances are restricted. The Respondent stated that he has attended AA meetings and is glad to do so. The Respondent stated that while he was employed he had applied to another monitoring program in Manchester, NH, but was refused financial aid because he had been making too much money to qualify.

The Respondent stated that he did submit to the LADAC evaluation and was provided with an evaluation and verbal advice. The Respondent expressed frustration at the effect of the Settlement Agreement on his career in that it is impossible to obtain employment when he must present the Settlement Agreement to any prospective employer. The Respondent said that he was willing to comply with anything, urine screens and AA meetings; however, he did not see how compliance would benefit him at this point.

A member of the Board questioned the Respondent's representation before the signing of the Settlement Agreement that his employer would be supportive as he was considered a valued employee. The Respondent stated that once he faxed the Settlement Agreement to his employer, he was terminated.

Chairperson Daley asked the respondent if he had abstained from alcohol and all controlled substances since signing the Settlement Agreement. The Respondent responded in the affirmative.

Chairperson Daley asked the respondent if he understood that he was responsible for any expenses generated by treatment or service required by the Settlement Agreement. The Respondent responded in the affirmative.

Chairperson Daley asked the Respondent if he had been attending any AA or NA meetings on a regular basis. The Respondent replied that he has attended AA, most every day since the last hearing, and is trying to do the right thing. The Respondent did not have a sponsor.

Chairperson Daley asked the Respondent what he would like the Board to do about his situation. The Respondent replied that he would like the Board to monitor his activities, that at this point and with no income, he could not afford urine testing on his own or any treatment. The Respondent reiterated that he could not foresee employment as a respiratory care practitioner if he had to abide by the Settlement Agreement's requirement that he provide a copy to any employer.

Chairperson Daley asked Hearing Counsel for suggestions. Hearing Counsel responded that she had given this situation a great deal of thought. For Boards that have the capability to conduct the monitoring, it is difficult to set up urine screens with private organizations or hospitals, and a physician's order might be required for each screen. Hearing Counsel expressed that the Respondent's history of substance abuse presents safety issues with the Respondent's practice unless he is monitored. In this case, Board monitoring is not an option and poses a significant problem for the Respondent

Hearing Counsel asked the Respondent if he had applied to the Concord Hospital program. The Respondent replied that the programs require that he provide financial information to determine if he qualifies for financial aid. While he was employed he did not qualify for financial aid. The Respondent stated that the Manchester and Concord programs have similar requirements. The Respondent stated that he has not applied for financial aid.

A Board Member asked if the PharmAssist program would intervene on the Respondent's behalf. Hearing Counsel responded that Joe Killcullen who performed the Respondent's evaluation was the PharmAssist person. Veronique Soucy interjected that the evaluation was done through the Pharmacy Board's intervention. She stated that Mr. Killcullen expressed that the evaluation was all they could do. Chairperson Daley summarized that there is no mechanism for this Board to sponsor monitoring of substance abuse.

Chairperson Daley asked Hearing Counsel if she had any other witnesses or exhibits to bring forth. Hearing Counsel stated that the LADAC evaluation should be re-numbered to

Exhibit 1 and her memo regarding the Respondent's employment status should remain Exhibit 2. The Respondent had no objection to these exhibits being entered into the record. The Respondent had no exhibits to enter into the record.

The Respondent made a closing statement in which he expressed regret that the Board had to be dealing with his problem. The Respondent also knew of other professionals who were helped within their profession and regretted that this was not an option for him through this Board. The Respondent finalized by stating that this was his reality.

DISCUSSION AND CONCLUSION

In the Settlement Agreement the Respondent's license was reinstated to a Provisional license with conditions.

The Board found that the Respondent did fulfill requirement E of the Settlement Agreement and had a LADAC evaluation performed, now identified as Exhibit 1. The evaluation was accomplished by the intervention of the Board by contacting the PharmAssist Program on the Respondent's behalf.

Upon review of the Respondent's LADAC evaluation, the Board found an outstanding conflict between the exhibits and the Respondent's testimony. At the hearing the Respondent answered that he had abstained from alcohol and controlled substances since signing the Settlement Agreement. During the LADAC evaluation, the Respondent admitted to drinking alcohol and using a narcotic drug since signing the Settlement Agreement. The Board found that the Respondent has failed to meet requirement F of the Settlement Agreement, abstention from alcohol and all controlled and/or narcotic drugs.

The Board found the Respondent has failed to meet requirement D of the Settlement Agreement, random urine screens. The first screen was to be done within 48 hours and then up to

two times per week for at least 3 months, and then on a random unannounced basis for the duration of the probationary period.

The Board found the Respondent failed to meet requirement H of the Settlement Agreement, a mental health evaluation within thirty days. With the evidence presented at the hearing, the Board noted inconsistent testimony and specifically, the LADAC evaluation and The Respondent's use of alcohol and controlled substance. The report also indicates short-term memory loss, which is a serious concern for the Board.

The Board finds that Mr. Corkery is in violation of meeting the conditions D and H of the Settlement Agreement by failure to provide the Board with the documents necessary to document the monitoring of random urine analysis and submission of a mental health evaluation report in a timely manner.

THEREFORE, IT IS ORDERED that Joseph M. Corkery be reprimanded. Pursuant to RSA 328-F:23, V, the Respondent must fully satisfy any condition contained in this Order before the Board will consider the reinstatement of a Respiratory Care Practitioners license to the Respondent. The decision as stated below is adopted as the decision of the Board in this proceeding; and,

IT IS FURTHER ORDERED that the Respondent's license be suspended. The Respondent cannot apply for reinstatement of his Respiratory Care Practitioners license for a period of three years commencing from the effective date of this Order.

IT IS FURTHER ORDERED that within ten (10) days of the effective date of this Order, the Respondent shall furnish a copy of the Order to any current employer for whom the Respondent performs services which requires knowledge and training in the science of respiratory care, or directly or indirectly involves access to drugs; and to any agency, authority, or professional association which licenses, certifies, or credentials respiratory care practitioners, with which the Respondent is affiliated.

IT IS FURTHER ORDERED that for a period of five (5) years from the effective date of this Order, the Respondent shall furnish a copy of the Order to any employer to whom the Respondent may apply for work which requires knowledge and training in the science of respiratory care, or directly or indirectly involves access to drugs; and to any agency, authority, or professional association which licenses, certifies, or credentials respiratory care practitioners, to which the Respondent may apply for professional privileges or recognition.

IT IS FURTHER ORDERED that the Respondent provide documentation of completion of an outpatient substance abuse treatment program at either Concord Fresh Start Program or Riverbend or another facility with the Board's prior approval for counseling in outpatient substance abuse group therapy and;

IT IS FURTHER ORDERED that the Respondent must obtain a sponsor and attend AA and/or NA meetings no less than 5 meetings per week for a year. The sponsor must verify attendance, and;

IT IS FURTHER ORDERED that the Respondent submit to random urine toxicology screenings, paid for by the respondent, for a five-year period following his return to respiratory care practice, and;

IT IS FURTHER ORDERED that the Respondent attend 10 hours of Board approved continuing education in the practice of respiratory care for every year prior to the reinstatement of his license from the date of this Order forward, and;

IT IS FURTHER ORDERED that the Respondent notify the Board's office of any change of address, and;

IT IS FURTHER ORDERED that the Respondent shall be permitted to apply for reinstatement of his license after such time that he has completed the reinstatement requirements as set forth in administrative rules, to the board's satisfaction and, provide documentation of completion of all continuing education requirements to the Respiratory Care Practitioners Governing Board, and;


IT IS FURTHER ORDERED that the Respondent meets all other conditional, reinstatement or initial requirements as New Hampshire law requires, beyond the conditions as stated above, to re-enter the profession, and;

IT IS FURTHER ORDERED, that failure to comply with any of the conditions imposed by this order or the violation of any federal, state, or local respiratory care related laws or regulations may result in an extension of the time period before the Respondent can apply for reinstatement of his license to practice respiratory care in New Hampshire, and;

IT IS FURTHER ORDERED, that a copy of this order shall be mailed to the last known address provided by the Respondent to the Board via certified mail, return receipt requested, and that the Board shall separately notify the Federal Healthcare Integrity Protection Data Bank (HIP-DB), the National Board for Respiratory Care Database and, any state regulatory respiratory care licensing board in which the Respondent holds or has ever held a license.

BY ORDER OF THE BOARD *//

Date: JANUARY 5, 2005


James R. Daley, RCP, Chair
Respiratory Care Practitioners Governing Board